

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WESLEY ULMER,))
))
Plaintiff,))
))
v.)	Civil Action No. 1:06-CV-00459-JJF
))
THE HOME DEPOT, INC.,))
))
Defendant.))
)	

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A CLAIM**

Defendant Home Depot, U.S.A., Inc. (“Defendant” or “Home Depot”), incorrectly identified as “The Home Depot, Inc.” in Plaintiff Wesley Ulmer’s (“Plaintiff’s”) Complaint, hereby moves, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for the entry of an order dismissing Plaintiff’s Complaint in its entirety for failure to state a claim upon which relief may be granted.

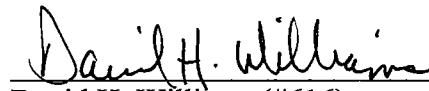
Plaintiff’s first cause of action alleges that Home Depot breached an implied covenant of good faith and fair dealing when it discharged him from employment. Plaintiff’s Complaint fails to state such a claim, however, because: (1) no facts pled in Plaintiff’s Complaint suggest that Home Depot engaged in any fraud, deceit, or misrepresentation in connection with his termination, and (2) Plaintiff does not allege that Home Depot falsified or manipulated employment records to create fictitious grounds for Plaintiff’s termination.

Plaintiff’s second cause of action, which seeks the recovery of punitive damages as a result of Home Depot’s alleged breach, should be dismissed because Delaware law

does not permit the recovery of punitive damages in connection with a claim for breach of the implied covenant of good faith and fair dealing in the employment-at-will context.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law, Home Depot respectfully requests that the Court enter an Order dismissing Plaintiff's Complaint in its entirety with prejudice.

Respectfully submitted,



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Dated August 18, 2006

Attorneys for Defendant Home Depot U.S.A, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WESLEY ULMER,)	Civil Action No. 1:06-CV-00459-JJF
)	
Plaintiff,)	
)	
v.)	
)	
)	
THE HOME DEPOT, INC.,)	
)	
Defendant.)	
)	

ORDER

AND NOW, this _____ day of _____, 2006, upon consideration of Defendant's Motion to Dismiss Plaintiffs' Complaint for Failure to State A Claim and any response thereto, it is hereby ORDERED that the motion is GRANTED; and it is further

ORDERED that Plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE.

Joseph J. Farnan, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

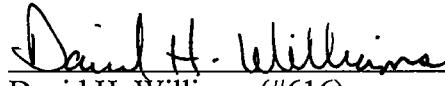
WESLEY ULMER,)
Plaintiff,)
v.) Civil Action No. 06-459
THE HOME DEPOT, INC.,)
Defendant.)

)

CERTIFICATE OF ELECTRONIC SERVICE

I, David H. Williams, hereby certify that on August 18, 2006, I electronically filed the attached **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM** with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

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Dated: August 18, 2006

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